IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1019

JOHN J. AFFLERBACH

VS.

UNITED STATES OF AMERICA
U.S.COURT OF APPEALS FOR
THE 10TH CIRCUIT AND THE
CLERK OF THAT COURT

PETITION FOR CERTIORARI

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JANUARY 15, 1977

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IN THE SUPREME COURT OF THE UNITED STATES

JOHN J. AFFLERBACH, PETITIONER,

VS.

UNITED STATES OF AMERICA,
U.S.COURT OF APPEALS FOR
THE 10TH CIRCUIT AND THE
CLERK OF THAT COURT, RESPONDENTS.

PETITION FOR CERTIORARI

TO: The honorable, The Justices of the
Supreme Court of The United States

Your Petitioner, John J. Afflerbach, having been first duly sworn, represents and shows to this Court as follows:

I.

OFFICIAL REPORTS

The Court of Appeals for the 10th Circuit on December 30, 1976 affirmed a Judgment of Conviction entered in the U.S.District Court on Sept. 19 , 1975 whereby Petitioner was sentenced to a term of 3 years for an alleged violation of 26 U.S.Code Section 7201 and an additional term of 30 days for an alleged contempt of Court (D.C.No. CR-75-25)

The decision of the Court of Appeals, No. 75-1795 is attached hereto as Appendix "A".

Petition for a re-hearing en banc was filed by mail to the Court of Appeals on January 7, 1977. Order denying Petition for re-hearing was made and entered in the Court of Appeals on Jan. 19, 1977.

II.

JURISDICTION OF THE COURT

The Supreme Court of the United States has jurisdiction of this Petition for a Writ of Certiorari to review a decision of the 10th Circuit Court of Appeals affirming a 1 Count Indictment for a claimed violation of 26 U.S.Code Section 7201 of a willful attempt to evade or defeat income tax and a contempt of court conviction in connection with the trial thereof.

Jurisdiction is confered by Article III, U.S.Constitution and 28 U.S.Code Sections 1651, 2101 and 1254.

III.

PROCEDURAL HISTORY

1. Inditment filed March 5, 1975

2. Arraignment and Not Guilty Plea entered on April 4, 1975

3. Motion to dismiss Indictment filed on May 13, 1975

4. Motion for Counsel of Choice, licensed or unlicensed filed June 2, 1975.

5. Order appointing Counsel, Lou Mankus a member of the licensed Bar and a CIA Agent. (Fact he was a CIA Agent not disclosed to Defendant)

6. Motion for unlicensed Counsel of own choice re-filed on July 13, 1975

7. Motion to have the trial transfered from Cheyenne to Casper, 250 miles away filed July 30, 1975.

8. Affidavit of Prejudice filed against Judge Payne July 30, 1975.

9. Denied to have proceedings transfered to Casper, Wyoming August 4, 1975

10. Trial commenced Aug. 26, 1975

11. Defendant found guilty of contempt and sentenced to 30 days in jail. 8-27-75

12. Jury returned guilty verdict 8-29-75.

13. Defendant sentenced to 3 years on offense in Indictment and 30 days for contempt on Sept. 19, 1975.

14. Notice of Appeal filed on 9-19-75.

15. Circuit Court decided appeal 12-30-76.

16. Petition for re-hearing filed on January 7, 1977.

IV.

QUESTIONS PRESENTED FOR REVIEW

1. Does the accused in a Criminal Case in the U.S.District Court have the 1st, 4th, 5th, 6th and 9th Amendment right to have the assistance of Counsel of his own chosing and not the choice of his adversary, the government, in aiding, assisting and speaking for him at his request in the presentation of oral and written Petitions and evidence in defense of the accused?
HELD, NO.

2. Is the appointment of a licensed Attorney who is also a CIA Agent by the Court to defend the accused a sufficient compliance with the 6th Amendment right to Counsel?
HELD YES.

3. Does the Defendant have the Constitutional right to conduct his own defense?
HELD NO.

4. Does the Defendant have the same right to have lay assistance at the Defense table with him as the government?
HELD NO.

5. Is an unwanted Counsel a Counsel at all?
HELD YES.

6. Can Defendant be prohibited from consulting with his own chosen Counsel in the Courtroom at any time during the trial and only outside the courtroom across the hall in a small room during recess?
HELD YES, THIS WAS PROPER.

7. Can Defendant's Counsel be banned from talking to Defendant in the Courtroom when he exposes the fact that Defendant's court appointed counsel is a CIA Agent?
HELD YES.

8. Is an evil motive and bad purpose a necessary constitutent element of the crime of willful attempt to evade or defeat a tax under 26 USC 7201.

9. Is a Defendant entitled to explain his side of the case and introduce evidence on what he relied to show that he acted in good faith, including U.S.Supreme Court decisions relied upon?
HELD NO, IT WAS RIGHT TO EXCLUDE THIS EVIDENCE.

V.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

1. Amendments 1, 4, 5, 6 and 9 of the Constitution of the United States.

Art. 1 Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Art. 4. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

Art 5. No person shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law.

Art 6. "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of Counsel for his defense."

Art. 9. "The enumeration of the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

26 USC 7201 "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall be guilty of a felony."

28 USC Sec. 455(a). "Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

10. Is Defendant entitled to have an expert witness whom he relied upon for advice testify at the trial?
HELD NO.

11. Does a trial Judge who was the target of personal abuse and criticism from Defendant in a law suit before the trial have to disqualify himself and provide a fair tribunal as a basic requirement of due process of law?
HELD NO, HE DOES NOT HAVE TO DISQUALIFY HIMSELF.

12. Does Defendant have the right to have the case tried in the district in which the offense was committed and in the division where he lives pursuant to Rule 18, Rules of Criminal Procedure?
HELD NO.

13. Can a Defendant be found guilty of a Contempt where the record shows there was no contempt.
HELD YES.

14. Can the Indictment be amended during the trial to include a citation for contempt?
HELD YES.

15. Can an alleged series of misdemeanors be set out in an Indictment and added up to a felony?
Held Yes.

16. Is the Jury to be charged that no inference of criminal conduct can be made up from the peaceful exercise of 1st Amendment rights

Rule 18, Rules of Criminal Procedure;
"Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The Court shall fix the place of trial within the district with due regard to the convenience of the defendant and witnesses."

STATMENT OF THE CASE

Defendant-Petitioner was indicted in the U.S.District Court for Wyoming on March 5, 1975 under 26 USC 7201 which is as follows:

"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, ...be guilty of a felony."

Defendant filed an Income Tax Return for the year 1972 on or about March 15, 1973 whereby he raised certain constitutional objections, including the 5th Amendment objection against self-incrimination. He also filed suit in the U.S.District Court to have the objections passed upon. The Court refused to do this at the insistance of the U.S.Attorney.

Defendant filed a motion to dismiss the Indictment and a Motion to have counsel of his own choice not licensed by any State. These Motions were denied.

Defendant lives in Casper, Wyoming and lives 250 miles from Cheyenne where the trial venue was laid. Defendant's motion to have the trial transfered to Casper, Wyoming for convenience of witnesses and where he resided was denied.

Affidavit of prejudice was filed against Judge Veryl H. Payne whom the case was assigned to because he was a defendant in litigation involving an anti-trust suit brought against him by Defendant. Judge Payne refused to disqualify himself and the case went to trial on August 26, 1975 before a Jury in the U.S.District Court in Cheyenne, Wyoming.

On July 7, 1975 the Court appointed one Lou Mankus, a licensed attorney of the Wyo. Bar Assn. and , unknown to Defendant, a Central Inteligence Agency Agent.

All the time Defendant objected to the appointment of Mankus and requested that he have his own Counsel, Jerome Daly, represent him and assist him during the trial. The Court denied this request but stated that Daly could consult with Defendant from the spectator's section during the trial. The Court ordered that Daly could not sit at the Counsel table with Defendant and assist him during the trial.

During the picking of the jury Daly was informed, by an informant, that the Court appointed Attorney, Lou Mankus, was a CIA Agent. Daly informed Defendant of this fact from the spectator's section when Defendant was beconed back to consult with Daly. Then and there, Defendant confronted Lou Mankus with the accusation that he was a CIA Agent, and he, Mankus did not deny this fact. Defendant then moved the Court for a mistrial and moved the court to have Counsel of his own choice in whom he had confidence. The trial Judge, Veryl H. Payne denied this request and then ruled that not only could Daly not sit at Defendant's table during the trial, but that Daly could not be consulted at all in the Court room during the trial but had to be consulted by Defendant out in the hallway.

This ruling came after Defendant was informed by Daly that Lou Mankus, the Court appointed attorney was a CIA Agent. Later during the trial Judge Payne made the remark, "So what if he,(Mankus) is a CIA Agent."

Defendant was forced to defend himself without Counsel as Mankus was an unwanted Counsel and Defendant was not permitted his own Counsel. Both Defendant and Daly were and are Ministers in the same Church, The Life Science Church.

As shown by the transcript, the trial was extremely one sided. All of the government's exhibits were received in evidence along with all of the government's evidence.

Virtually none of Defendant's exhibits were recieved in evidence.

Defendant started suit on March 26, 1973 to have his objections that he raised in the return he filed that was in question passed upon. The Court refused to receive this in evidence upon the question of intent and good faith.

Defendant relied in good faith on decisions of the U.S.Supreme Court in filing his return and in raising his protest. 27 of the Government's exhibits were recieved. Defendant offored 14 exhibits and one was received in evidence. All of Defendant's exhibits were to show good faith and to prove no bad faith or evil intent.

During the trial Defendant was found guilty of contempt of Court for obstructing justice and sentenced to 30 days. The record will show that there was no contempt.

In the charge to the Jury the Court instructed the jury on the definition of "wilfullness", and in so doing omitted any requirement that the jury had to find an "evil intent and specific bad purpose". The jury returned two times and requested the Court to define the meaning of the term "wilfullness" used in the statute. The Court refused to instruct the jury on the definition of"wilfull"as is set forth in U.S. vs Bishop, 412 US at 361 (1973).

On the contrary, the Court instructed that the only bad purpose necessary was an intent to do something the law forbids or fails to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Thus instructed the jury returned a verdict of guilty and the Court sentenced Defendant to a term of 3 years and 30 days for contempt.

ARGUMENT

1. DOES THE ACCUSED IN A CRIMINAL CASE HAVE THE RIGHT TO THE ASSISTANCE OF COUNSEL OF HIS OWN CHOICE.

HELD NO.

Here Defendant was not permitted to have his chosen and trusted Counsel assist him and speak for him during the trial. On the contrary the Court appointed a licensed Attorney of the Wyoming Bar who was a CIA Agent.

Not only that but when confronted with the question the Court stated; "So what if he is a CIA Agent".

Here Defendant was being prosecuted by an Agent of his enemy and was also presented with an agent of his enemy to Counsel and assist him.

Under such circumstances, an agent of the government is no Counsel at all. The Defendant in this case was provided no Counsel at all. Defendant's chosen counsel was told to wait in the Hall to talk to Defendant. Defendant was forbidden any one at Counsel table with him to help him at all. This trial was medieval. The government was permitted to have any one it chose at the table, license or no license. Persons came and went to the government table during the trial at will. Defendant could not consult with any one in the Court room.

Faretta vs. California, 422 US 806, 45 L Ed 2d 562 is controlling in this case.

This Court stated there: "The right to defend is given directly to the accused... The Counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant."

An unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction."

"The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers."

Defendant was a Minister in the Life Science Church. The Counsel he chose was a minister in the Life Science Church. Defendant has the natural right, independent of any Constitutional provisions, to have the assistance of and to counsel with a person of the same religious philosophy. This is consistent with the 1st Amendment right of Petition, assembly, association and speech and free exercise of religion.

The very word "Counsel" means some person who you will consult with and confide in. Nothing more or less. There is nothing in the constitution which gives the Court the right to license a criminal Defendant's Counsel. This is a relic of ancient monarchy.

The trial in the U.S.District Court in Cheyenne, Wyoming in this case was a very sickening spectacle. Defendant was wedged between a CIA Agent and a hostile Judge, without Counsel or an assistant of any kind.

The statment of Justice Sutherland is appropriate here, as contained in Powell vs. Alabama, 287 US 45; "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be denial of a hearing and, therefore, of due process in the constitutional sense."

Freedom of choice of counsel is so personal that the state cannot intrude into it any more than it can intrude into matters of conscience.

If a woman has the constitutional right of privacy and association to terminate her association with a living fetus inside of her and obtain an abortion, and if this is her personal choice only restrained by her own conscience and her communication with her God as she sees it; then certainly a criminal defendant should have the personal freedom of choice of Counsel and whom he will confide in and whose morals he choses to patern himself after. As is stated in Faretta, "Personal liberties are not rooted in the law of averages." "The right to defend is personal". The right to choice of Counsel is personal.

How can it be said that Petitioner was not prejudiced. If Petitioner had the benefit of an assistant and Counsel of the assistant he would not have been convicted of contempt, and very likely would have been acquitted entirely.

Where fundamental constitutional rights are involved and denied no prejudice need be shown at all.

2. IS THE ACCUSED IN A CRIMINAL CASE ENTITLED TO HAVE THE ASSISTANCE OF A PERSON AT HIS TABLE WHO IS NOT LICENSED TO PRACTICE LAW BY THE COURT?
HELD NO.

In this case not only would the court not allow Defendant to have an unlicensed spokes man and representative, but the court would not even allow Defendant to have any help at all at his table.

All the while the government had any one they wished. This is a denial of equal justice under the law.

This was the case of the government of the USA vs. John J. Afflerbach. The government could license any one it wished to represnt itself in the controversy.

Defendant should have the same right, under our adversary system of equal justice under the law to license any one he wished with his own power of attorney to represent him as his proxy and spokesman during the trial.

Defendant does not have to accept one who is licensed by his enemy.

Sailing under the license of an enemy has been declared illegal under the constitution independent of statute.

The above takes care of questions presented for review No, 1 thru 7.

3. IS AN EVIL MOTIVE AND BAD PURPOSE A NECESSARY CONSTITUTENT ELEMENT OF THE CRIME OF WILLFUL ATTEMPT TO EVADE OR DEFEAT A TAX UNDER 26 USC 7201?

Defendant requested the trial court to instruct the jury that an evil motive and a bad purpose are necessary to the definition of"wilfullness".

The trial court instructed the jury as follows:

"An act or failure to act is "willfully" done if done voluntarily and intentionally, and with specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law."

The Court was asked to instruct in keeping with the definition of"wilfullness" as set down in US v. Murdock 290 US at 397-98 and US v. Bishop, 412 US at 361.

These US Supreme Court cases hold that an evil motive and bad purpose are necessary and essential elements of willfulness under 7201.

The Eighth Circuit in US v. Pohlman, 510 F.2d 414, in following Murdock and Bishop stated:

"Since bad purpose and evil motive are essential elements of willfulness under 7203, we see no reason that the jury should be afforded the ambiguity of an instruction which possibly denotes otherwise. If these are essential elements of the misdemeanor the jury should be told so in plain and unambiguous terms...obviously

if the jury is to function effectively, it must be given a clear statement of each element which the government must prove. The elements, as expressed in the statute are hardly set forth with sufficient clarity to permit the jury to perform its duty intelligently."

In this case the 10th Circuit stated "However, the definition of "willfulness" in this context does not include "bad purpose" or "evil motive".

Here the 10th Circuit is reversing the Supreme Court's holding in Murdock and Bishop.

Defendant requested a proper instruction in writing and was entitled to have it given. It was error to refuse to follow Bishop.

Further, the Court erred in refusing to charge the jury, as stated in Bishop, that if Defendant in good faith relied on a prior decision of the Supreme Court, the requirement of an offence committed "willfully" is not met.

This was also error not to so charge.

Again the error can be charged to the refusal to allow counsel of Defendant's choice.

4. IT WAS ERROR TO EXCLUDE EVIDENCE SHOWING GOOD FAITH AND LACK OF BAD PURPOSE AND EVIL MOTIVE.

The trial court excluded 14 out of 15 of defendant's exhibits which he testified that he relied upon in filing his return and in starting suit in the court to have his objections passed upon.

Since the Circuit Court held that good faith challenges to the income tax and an evil motive and bad purpose were not a necessary element in determining what is or is not"wilfull" then the court reasoned that it was not error to exclude all of this evidence bearing on Defendant's state of mind.

Defendant's state of mind was directly relevant, then he should have been allowed to testify fully as to what he relied upon and should have been allowed to testify and read from the U.S.Supreme Court cases that he relied upon.

Furthermore, Defendant consulted with an expert on tax and constitutional law before filing his return and before starting suit to have his objections passed upon raised in the return by the Court.

The Court excluded the testimony of this expert in its entirety and would not allow defendant to testify as to what material he relied upon sent to him by this expert in forming his judgment to take the action he took.

This was error to exclude this evidence.

This assignment includes the 10th question presented for review;

"Is defendant entitled to have an expert witness whom he relied upon for advice testify at the trial? The court erred in holding no.

5. DOES A TRIAL JUDGE WHO WAS THE TARGET OF PERSONAL ABUSE AND CRITICISM FROM DEFENDANT IN A LAW SUIT BEFORE THE TRIAL HAVE TO DISQUALIFY HIMSELF AND PROVIDE THE OPPORTUNITY FOR A FAIR TRIBUNAL AS A BASIC REQUIREMENT OF DUE PROCESS OF LAW?

THE TRIAL COURT AND COURT OF APPEALS HELD NO.

Section 455(a) of 28 U.S.Code provides: "Any Judge.....of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Withrow v. Larkin, 43 Led 712, (April 15, 1973) held:

" A fair trial in a fair tribunal is a basic requirement of due process."..... "our system of law has always endeavored to prevent even the probability of unfairness."....." In pursuit of this end various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge is to high to be constitutionally tolerable. Amoung these cases are those in which the adjudicator has a pecuniary interest in the outcome and in which he has been the target of personal abuse or critism from the party before him." .

In this case, the file shows, that the trial Judge was named as a defendant in an Anti-Trust suit filed by Defendant against him personally. It was also filed against the Wyoming Bar Association and the American Bar Association. It charged a conspiracy by the judge off of the bench to monopolize the distribution of legal services by various overt acts.

The suit had merit, because since the Defendant in this case started his suit the Justice Dept. Anti-Trust division has followed up with a Anti-Trust suit against the American Bar Association.

Judge Payne, the trial judge, was personally involved and embroiled over it. It was error for him not to disqualify himself.

6. DOES DEFENDANT HAVE THE RIGHT TO HAVE THE CASE TRIED IN THE DIVISION OF THE WY. DISTRICT WHERE HE AND HIS WITNESSES RESIDED IN CASPER, WYOMING?
Held No.

The case was tried in Cheyenne Wyoming some 200 miles away instead of Casper Wyoming where Defendant and his witnesses resided.

Rule 18 provides:
"...the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses."

This the Court refused to do. The case should have been tried in Casper.

See Dupoint v. US 388 F.2d 39; Gates v. US , 122 F2d 571; US vs. Lewis 504 F2d 92 the circuits are unaminous against the 10th Circuit.

In Dupoint the Court stated:
"Where prosecution was transfered 42 miles farther from scene of alleged offense for convenience of prosecution and not convenience of defendant or witnesses, defendant was entitled to reversal of conviction."

For not changing the venue Defendant was entitled to have the conviction reversed.

7. THE COURT ERRED IN FINDING DEFENDANT IN CONTEMPT AND IN ENTERING AS A PART OF THE JUDGMENT IN THE FELONY CASE A SENTENCE OF 30 days for contempt.

In the first place the Court had no jurisdiction in the first place to sentence Defendant in the Felony Indictment to a contempt sentence. This added to the charges in the felony indictment. The Court did not even attempt to set up another file or bring a proper contempt charge against Defendant. If the purpose of restoring order was the purpose of the court then a civil contempt charge and sentence would have been appropriate.

However, a reading of the transcript shows that defendant was only attempting to defend himself and that no orders of the Court were violated. An attempt to introduce evidence and defend oneself without counsel,where there are no orders violated and where the judge is called no names and is not slandered cannot be an obstruction of justice.

The record shows that this is the basis for the contempt:

Dr. Afflerbach: "AN ESSAY ON THE TRIAL BY JURY" this is J-6 which tells the jury that you have a right to decide the law as well as the fact,--

THE COURT:Just a minute.

DR AFFLERBACH: --to be sworn in to support the Constitution and a right to use your own conscience.

THE COURT: Just a minute.

The jury will retire to the jury room.

THE COURT: I am going to find you in contempt, Mr. Afflerbach.

I find that your conduct at issue is misbehavior; I find that it has risen to the level of obstructing the administration of justice.

This shows no contempt.

8. THE COURT ERRED IN REFUSING TO DISMISS THE INDICTMENT ON THE GROUNDS THAT IT CHARGED ONLY MISDEMEANORS UNDER 7203, Title 26, USC.

A reading of the indictment in the file shows that it only charges misdemeanors and it should have been dismissed.

Under Spies vs. U.S. 317 US 492 the court held:

"The (section) of the Internal Revenue Code making it a felony willfully to attempt to evade or defeat a tax, is not violated by willful omissions to make a return and pay a tax, defined in the Sections (7203) as misdemeanors."

The indictment should have been dismissed.

9. THE COURT ERRED IN ITS INSTRUCTIONS AS REGARDS THE MISDEMEANOR ALLEGATIONS IN THE INDICTMENT ALSO IN ITS CHARGE TO THE JURY.

The court should have charged the jury as requested that it could not consider the alleged misdemeanor allegations in connection with the evasion charge. And, that Defendant had the right to Petition and could not be found guilty of a crime for exercising his 1st amendment rights.

CONCLUSION

Defendant was denied his fundamental right to the assistance of Counsel for his defense; his right to a fair tribunal; his right to be free from having the Court appoint an undercover, CIA Agent to defend him as his Counsel; his right to tell his side of the story in his defense and his right to introduce evidence to show he had no criminal intent and his right to have the jury property charged on the law. Defendant's evidence was excluded from the consideration of the jury, he was subject to an inproper charge to the jury.

WHEREFORE, your Petitioner prays that a WRIT OF CERTIORARI issue from this Court directed to the Court of Appeals and the District Court below commanding that the record be certified up to the end that the Judgment of the Courts below be reversed and that Petitioner be granted a Judgment of acquittal on all charges, or in the alternative a new trial.

RESPECTFULLY SUBMITTED,

John J. Afflerbach

John J. Afflerbach
In Pro Per
827 North Park
Casper, Wyoming 82601

Subscribed and sworn to before me this 1-20, 1977

Clarence A. Evert

Notary Public

Com Ex 7-21-78

APPENDIX "A"

DECISION IN 10TH CIRCUIT COURT OF 12-30-76

USA vs. Afflerbach No. 75-1795

Defendant was convicted under 26 USCA 7201 of a willful attempt to evade or defeat income tax. It was charged in the indictment that the defendant recieved taxable income of some $32,153.00 in 1972 on which he owed $12,797.02 in income tax. The Government alleged that the overt acts were a failure to file declaration of estimated tax for 1972, concealing and attempting to conceal his true and correct income, failure to pay the income tax due, and filing purported income tax returns showing a tax in the amount of $10.75 for 1972 and an amended return showing $312.67 (both returns contained no information relating to income from which a tax could be computed and were not valid returns). The Defendant was found guilty and sentenced to three years imprisonment. He was also sentenced to thirty days for contempt of court. The defendant appeals.

ON appeal, the defendant claims that the trial court erred in refusing to instruct the jury as he requested regarding the elements of a section 7201 offense, especially as to willfulness and good faith. In US v. Swallow, 511 F. 2d 514 (loth Cir), this court stated that the elements of such an offense are substantial income tax deficiency, willfulness, and some affirmative act constituting an attempt to evade or defeat the tax. The instructions given clearly covered these elements. As to "willfulness," the defendant asserts error because the court did not give the exact instruction he submitted. This stated that there must be a "bad purpose" and "evil motive". However, the definition of "willfulness" in this context does not include "bad purpose" or

"evil motive". We held in Swallow and in U.S. v. Dowell, 446 F. 2d 145 (10th Cir.), that "willfully" be defined as "voluntarily" and "intentionally" done with specific intent to evade the taxes. This definition was included in the instructions given in this case. No particular form is essential for the wording of an instruction so long as it conveys as a whole a correct statement of the applicable law. Draeger v. Grand Central, Inc., 504 F.2d 142 (10th Cir). The instructions here given did present a correct statement of the law when considered as a whole.

The defendant on this same point urges that it was error for the trial court to refuse to instruct that a failure to make a proper return and pay a tax is not a violation of section 7201. We hold that such refusal to instruct was not error. There was evidence introduced that the defendant knew he had taxable income during the year in question, and that he intentionally filed a purported return which did not contain enough information upon which a tax could be computed. The proof showed an intentional act to evade the law, and the affirmative act of filing the type of return he did. See US v. Porth, 426 F.2d 519 (10th Cir.). We held in US v. Dowdell, 466 F. 2d 145 (10th Cir), that a violation of section 7201 occurs when an attempt is made voluntarily and intentionally, with specific intent accompanied with some affirmative act. See also US v. Swallow, 511 F. 2d 514 (10th Cir).

The instructions given by the trial court covered all the elements of the offense, and we find no error.

In an argument somewhat related to the foregoing, the defendant urges that he should have been permitted to introduce into evidence certain treatises, tracts, briefs, an opinion

of a layman, and some similar documents to show what he relied on. These were for the most part matters of law, and in any event we cannot say that the trial court abused its discretion in refusing to admit these documents, and proferred testimony, as immaterial. Young v. Anderson 513 F.2d 969 (10th Cir.). The evidence showed that the defendant knew that the income tax statutes required that a proper return be filed and a tax paid. The defendant does not agree with the income tax laws nor the general fiscal system of the government, and he apparently believed this strongly, but this is not a defense. The acts were intentionally done with knowledge of the statutory requirements.

The defendant sought here in a separate action to establish immunity from prosecution. There is no basis for the introduction of the separate action into these proceedings. The defendant has confused rights concerning a source of income with what he asserts is a right to refuse to account for income. See US v. Sullivan, 274 US 259.

The defendant sought to disqualify the trial judge on the ground that the defendant and others had brought suit against nearly all the federal judges in the country, including the judge who tried this case. The matter was completely unrelated to this prosecution, and had been dismissed before this trial started. The attempt to disqualify the trial judge did not raise any proper grounds, and it was properly denied.

The defendant stated to the court that he wanted to be represented at trial and asked that a layman so represent him. This was properly refused by the trial court. US vs. Grismore, _____F2d_____ (10th Cir., No. 75-1880, filed Nov. 8, 1976). The court permitted defendant to consult with this person for a time in the courtroom and later only outside during recess. The Court appointed an attorney to be available to defendant and who was present during the trial, but defendant did not consult with him. The rights of defendant under the Sixth Amendment were fully protected and fulfilled. Rice v. Olson, 324 US 786; Shawn v. Cox, 350 F2d 909 (10th Cir.)

The charge, as indicated above, was under section 7201. The defendant urges that the wording of the indictment showed or should be construed to charge only a misdemeanor under 7203. This contention is without merit. The indictment clearly charges an offense under sec. 7201, and the proof was more than adequate to establish the violation. The distinction in Spies v. US, 317 US 492, was observed by the trial judge and some of the instructions contained language from the Spies case. The indictment was proper as were the instructions under Spies.

The defendant sought a change of venue, but it was properly denied. Wheeler v. US, 382 F 2d 998 (10th Cir)

The defendant was sentenced for contempt when, contrary to several warnings by the trial judge, he persisted in reading from documents he had sought to introduce in evidence, but which were denied. On at least three occasions, the trial judge warned the defendant that his conduct in regard to the documents offer was improper. The defendant had repeated arguments with the trial judge regarding the layman as counsel, as to his court-appointed attorney, and the exclusion of his exhibits. The trial judge made every allowance for a defendant who was representing himself, but the record shows that the defendant's conduct constituted a defiance

and an obstruction of justice. Since it was committed in the presence of the court, it was proper to punish the defendant summarily under Rule 42(a), Fed R. Crim. P. It was required as a corrective step to restore and maintain the dignity and authority of the court. US v. Peterson, 456 F. 2d 1135 (10th Cir.). We find no error in the contempt citation and its disposition.

AFFIRMED.